SUPREME COURT, U. S.
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MICHAEL RODAK, J

No. 74-1086

IN THE

Supreme Court of the United States

October Term, 1974

LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC; *et al.*,
Petitioners,

vs.

THE HEARST CORPORATION, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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THE HEARST CORPORATION, a corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Petitioners hereby petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit, which affirmed the dismissal of petitioners' action against respondent for recovery of certain employment benefits in the nature of pension, retirement and severance pay.

The decision of the court of appeals is contained in an opinion issued in two companion cases, No. 73-1742 and No. 73-1838. The two appeals involved the same parties, arose out of the same events, and were argued and considered together. In No. 73-1742, the court ordered the parties to arbitrate the merits of the disputes. The court, in view of its decision in No. 73-1742 holding that any and all grievances be decided by an arbitrator, affirmed the dismissal of petitioners'

complaint herein for damages and other judicial relief in No. 73-1838. Respondent herein has filed a Petition for Writ of Certiorari with respect to the court's decision in the companion case, No. 73-1742 (Sup.Ct. No. 74-982).

As petitioners previously advised this Court in applying for an extension of time to file this petition, the instant petition would not have been filed if respondent Hearst had not filed the petition in No. 74-982. Petitioners' principal objective in the instant litigation is to obtain a hearing on the merits of their claims in either the arbitral or judicial forum as soon as possible and, in the words of the court of appeals, "get on with it." Although petitioners believe there are valid reasons for granting the petition herein, we would be satisfied if certiorari were denied in both cases and it was therefore finally determined that petitioners' case on the merits was to be heard in arbitration.

Accordingly, if Hearst's petition in No. 74-982 were to be denied, we would no longer urge the granting of the instant petition. On the other hand, if Hearst's petition in No. 74-982 were to be granted, there would be compelling reasons for granting the instant petition.

OPINIONS BELOW.

The opinion of the court of appeals, reported at 504 F.2d 636, is set forth in Appendix A hereto. The opinion and order of the district court, reported at 352 F.Supp. 1382, is set forth in Appendix B hereto.

JURISDICTION.

The judgment of the court of appeals was entered on October 4, 1974, affirming the dismissal of petitioners' action which arose under Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a). On December 18, 1974, Mr. Justice Douglas issued an order granting petitioners an extension of time to and including March 3, 1975, within which to file a Petition for Writ of Certiorari. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1), and in accordance with Supreme Court Rule 19.

QUESTIONS PRESENTED.

1. Is arbitration the exclusive remedy available to one of the parties to a collective bargaining agreement when the other party to the agreement has repudiated the agreement and the arbitration provisions thereof and has refused to arbitrate the dispute or to participate in the selection of an arbitrator or recognize the jurisdiction of an arbitrator to hear the dispute?
2. When a party to a collective bargaining agreement repudiates the agreement and the arbitration provisions thereof, refuses to arbitrate a dispute or to participate in the selection of an arbitrator, and refuses to recognize the jurisdiction of an arbitrator to hear the dispute, is that party estopped from later claiming that arbitration is the exclusive remedy available to the other party to the agreement?

3. Does the existence of an arbitration provision in a collective bargaining agreement preclude an employee from exercising his right to sue his employer for wages due and payable under the provisions of a state labor code?
4. Does the existence of an arbitration provision in a collective bargaining agreement preclude retired employees and the beneficiaries of deceased employees from bringing an action in a court of law to recover vested benefits in the nature of pensions, retirement benefits, and severance pay?
5. Would the forfeiture of vested retirement and severance pay benefits by employees, without a hearing and determination on the merits of their claims, violate public policy?

STATUTE INVOLVED.

Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

The complaint in the instant case was for breach of contract, for recovery of unpaid wages, for declaratory relief, for declaration of a constructive trust, and for work and labor performed and money had and received. The petition in the companion case was to

vacate an arbitration award. Federal jurisdiction was based on Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a).

There is no substantial dispute as to the material facts, most of which were stipulated by the parties.

Petitioners, plaintiffs below, sought recovery of certain vested and earned retirement and severance pay benefits (denominated "alternate benefits" and "dismissal pay") provided for in a series of collective bargaining agreements between respondent and petitioner Los Angeles Newspaper Guild, Local 69 ("the Guild"), and sought various declarations of their rights to receive these benefits and of their rights to judicial relief.

Petitioners, other than the Guild, fall into four categories: (1) former employees of respondent Hearst who retired after reaching the age of 65 or after completing 25 years of service or after becoming permanently incapacitated; (2) the beneficiaries of deceased former employees of respondent Hearst; (3) a class of employees of respondent Hearst who have reached the age of 65 or completed 25 years of service but have not yet retired; and (4) a class of employees of respondent Hearst who have not yet reached the age of 65 or completed 25 years of service.

Under the provisions of a series of collective bargaining agreements between the Guild and respondent Hearst, the first of which was entered into in 1939 and the most recent of which was entered into on January 28, 1966, employees who reached the age of 65 or who completed 25 years of service or who became permanently incapacitated were entitled to receive, upon their resignation, a cash lump sum payment based

upon their years of service. Similarly, employees who had completed six months of service were to receive, in the event of dismissal, a cash lump sum payment based upon years of service, and the beneficiaries of deceased employees with six months or more of service were also to receive such a payment upon the death of said employees. The collective bargaining agreements also contained a provision for arbitration of grievances.

In October, 1967 defendant and the Guild began negotiations for new agreements. These negotiations have continued to date without success. On December 15, 1967, because of the inability of the parties to reach agreement on a new contract, the Guild called a strike against Hearst, which has also continued to date.

After December 15, 1967, Hearst consistently refused to pay all claims for alternate benefits and dismissal pay, consistently denied that the agreements were applicable or of any force or effect or that it had any duties or obligations under the agreements or any duties or obligations to pay any alternate benefits or dismissal pay benefits, consistently maintained that the arbitration provisions of the agreements were not applicable or in effect, and consistently refused to arbitrate the disputes or proceed to the selection of an arbitrator.

From March, 1968 through August, 1968, during meetings between the parties and in frequent correspondence between the parties, the Guild attempted to convince Hearst to pay the claims, filed grievances over Hearst's refusal to do so and, on several occasions, requested arbitration of the disputes and asked Hearst to participate in the selection of an arbitrator. Hearst consistently rejected the claims, maintained that

the agreements, and the alternate benefits, dismissal pay and arbitration provisions thereof were no longer applicable or in effect, contended that it had no obligations under the agreements, refused to arbitrate the dispute and refused to participate in the selection of an arbitrator.

In late 1968, a number of members of the Guild attempted to enforce their claims through the office of the Labor Commissioner of the State of California under the provisions of the Labor Code of the State of California. The Labor Commissioner held in favor of the claimants and demanded payment from Hearst, but Hearst failed to comply with the demand. Thereafter, the Labor Commissioner advised the Guild, first, that he would attempt to have a criminal complaint issued against Hearst, and later, that he would attempt to pursue a civil action against Hearst. Finally, the Labor Commissioner declined to take any action against Hearst on the ground that the claimants had an available remedy through arbitration and, on May 12, 1969, reassigned the claims to the claimants.

Thereafter, the Guild wrote to Hearst in another effort to obtain Hearst's agreement either to pay the benefits or proceed to arbitration. Hearst responded by reiterating its position that neither the agreements nor the alternate benefits, dismissal pay or grievance-arbitration provisions thereof were applicable or in effect. Hearst offered to meet concerning the subject matter of the claims, but advised the Guild "we will not meet with you for the purpose of selecting an impartial arbitrator or otherwise proceeding to arbitration." A meeting was held on August 27, 1969, at which time Hearst again repudiated the agreements and the alternate benefits, dismissal pay and arbitration provisions

thereof, refused to pay the claims, and refused to select an arbitrator or otherwise proceed to arbitration.

On October 3, 1969, the Guild wrote to the American Arbitration Association ("AAA") and asked it to appoint an arbitrator pursuant to its rules. On October 8, 1969, in disregard of and noncompliance with its own rules, the AAA purported to appoint Thomas T. Roberts to hear the dispute. In purporting to appoint Roberts, the AAA gave no prior notification to the parties, failed to first submit a list of possible arbitrators to either party for selection or rejection of particular arbitrators, and failed to permit Hearst an opportunity to file an answering statement to the Guild request prior to the appointment of an arbitrator, all as required by the AAA rules.

On November 11, 1969, Roberts wrote each party advising that he had calendared a threshold proceeding for February 3, 1970, to discuss issues relating to the viability of the grievance, the propriety of arbitration, the procedure to be followed and his jurisdiction. Roberts stated further, however, that "any appearance on that date will not constitute a recognition of my jurisdiction nor will it be deemed a waiver of available defenses relating to a lack of arbitrability."

On January 12, 1970, Hearst responded, advising Roberts of its position that the matter was not arbitrable because the collective bargaining agreements had expired prior to accrual of the claims and prior to any demand for payment or arbitration, and because the AAA's rules "are inapposite, and in any event have not been complied with". The letter continued:

> "Since we have been invited, we anticipate being present at the hearings; however, our presence is not a recognition of your jurisdiction nor a general

> or special appearance. Any participation on our part at those hearings should not be considered as a general appearance, special appearance, nor recognition of your jurisdiction; or is it in any way whatsoever a waiver of our stated position that this matter is not arbitrable. The Herald-Examiner's involvement in this arbitration should not be construed as a relinquishment of its right and intention to proceed before any appropriate tribunal to vindicate its position that this matter is not arbitrable."

At the outset of the meeting on February 3, 1970, Hearst reiterated its position as set forth in its January 12, 1970 letter, again stating that its participation was neither a general nor a special appearance and should not be construed in any way as a waiver of its position that the matter was not arbitrable. Then, for the first time, Hearst contended that the matter was not arbitrable because the Guild allegedly had not made a timely request to the AAA for appointment of an arbitrator. After a short discussion of the proposed agenda for the meeting, the arbitrator, Roberts, interrupted to make clear the basis upon which the proceeding was being conducted:

> "Let's consider another problem now before we go any deeper into this question. It should be clearly stated on the record that the Guild understands that if we go forward this morning regarding anything that the company is not making a special appearance, a general appearance or a half-way between appearance."

The proceeding then continued; the sole matter on which testimony and argument was received being the alleged failure of the Guild timely to request the AAA

to appoint an arbitrator under Article VII of the agreements, which provided that if an arbitrator was not selected by mutual agreement of the parties "the complaining party has the right to request the American Arbitration Association to proceed to the appointment of an arbitrator pursuant to the present rules" of the AAA. Article VII contained specific time limits for each step of the grievance procedure except this final step providing for a unilateral request to the AAA. As to this step, the agreement set forth no time limit.

On August 12, 1970, Arbitrator Roberts rendered his purported Findings and Award. Therein, he specifically limited his inquiry to "the narrow issue of whether or not the Guild sought the appointment of an arbitrator in a timely manner." Rejecting laches concepts, and instead purporting to insert into the agreement a "statute of limitations", the arbitrator concluded that the Guild had not applied to the AAA for appointment of an arbitrator in a timely manner.

On September 3, 1970, the Guild wrote to Hearst and advised it that the Guild rejected Roberts' purported "Findings and Award" and considered them null and void and not binding on the Guild. The Guild renewed its demand for payment of alternate benefits and dismissal pay.

On September 9, 1970, Hearst replied to the Guild letter of September 3, 1970, and rejected the Guild's demand for payment of alternate benefits and dis-

missal pay. Hearst further stated that it was its position that Roberts' purported award had settled Hearst's liability.

The Guild thereafter filed the instant action and a petition to vacate the purported award.

The district court vacated the purported arbitration award and ordered the parties to submit the dispute to the grievance procedure and, if necessary, to arbitration. The district court also dismissed petitioners' complaint on the ground that arbitration was the exclusive remedy.

The court of appeals affirmed the district court's decision vacating the award on a number of grounds and modified the judgment by ordering the parties to proceed directly to arbitration. The court of appeals, in view of its decision ordering arbitration, affirmed the district court's dismissal of petitioners' complaint.

REASONS FOR GRANTING THE WRIT.

1. The Decision Below Conflicts With the Principle Set Forth in Vaca v. Sipes, 386 U.S. 171 (1967) and in Decisions in Various Circuits That Arbitration Is Not the Exclusive Remedy When a Party Has Repudiated the Agreement or the Arbitral Remedy.

The court of appeals apparently concluded that since it was ordering arbitration of the disputes, it was unnecessary to determine whether petitioners also had a right to proceed with a judicial action for damages and other relief, and therefore affirmed the dismissal of petitioners' complaint. This holding disregards the principle established in other circuits and set forth by this Court in *Vaca v. Sipes,* 386 U.S. 171 (1967) that once one party to an arbitration agreement repudiates that agreement, the other party to the agreement has the option of compelling arbitration or of filing an action in a court of law and proceeding to a judgment on the merits in that forum.

While recognizing that arbitration is the exclusive remedy in some situations, this court in *Vaca v. Sipes, supra,* at page 185, stated:

> "An obvious situation in which the employee should not be limited to the exclusive remedial procedure established by the contract occurs when the conduct of the employer amounts to a repudiation of those contractual procedures."

This principle has been previously expressed in labor arbitration cases in the Court of Appeals for the Fifth

Circuit and the California Supreme Court. *Southwestern Electric Power Co. v. Local Union 738, IBEW*, 293 F.2d 929 (5th Cir., 1961); *Intl. Assn. of Machinists v. Hayes Corp.*, 296 F.2d 238, 243-245 (5th Cir., 1961); *United Steelworkers of America v. American Intl. Aluminum Co.*, 334 F.2d 147, 150 (5th Cir., 1964); *Teamsters Local Unions v. Braswell*, 395 F.2d 655 (5th Cir., 1968); *Local 659 IATSE v. Color Corp. of America*, 47 Cal.2d 189 (1956). The Court of Appeals for the Second Circuit has applied the same principle in a commercial arbitration case. *Lane Ltd. v. Larus & Bros. Co.*, 243 F.2d 364 (2nd Cir., 1957).

Although the court of appeals failed to afford petitioners the alternative remedy to which they were entitled, there can be no question from a reading of the court's opinion and based upon the undisputed facts herein that a clear, unequivocal repudiation of arbitration occurred. Thus, Hearst repeatedly denied the existence or applicability of the collective bargaining agreements, denied that it had any obligations under the agreements, refused to arbitrate or proceed to the selection of an arbitrator, insisted that it was entitled to a judicial determination of the disputes, and refused to recognize the jurisdiction of the arbitrator. Far more equivocal conduct than that involved herein has been held by both federal and California state courts to constitute repudiation. *Southwestern Electrical Power Co. v. Local 738, IBEW*, 293 F.2d 929, 932 (5th Cir., 1961); *Lane, Ltd. v. Larus Bros. & Co.*, 243 F.2d

364, 367 (2nd Cir., 1957); *Riess v. Murchison*, 384 F.2d 927 (9th Cir., 1967); *Local 659, IATSE v. Color Corp. of America*, 47 Cal.2d 189 (1956).

It is difficult to imagine a clearer, more unequivocal repudiation of arbitration than that which occurred in the instant case.*

The court of appeals' failure to afford petitioners the option of pursuing judicial remedies thus is in direct conflict with decisions of other circuit courts and with the principle set forth by this court in *Vaca v. Sipes, supra,* that arbitration ceases to be the exclusive remedy available to a non-repudiating party after repudiation of the agreement or of the arbitral procedures by the other party.

In the instant situation, Hearst waived its right to raise arbitration as a defense to petitioners' lawsuit herein and was estopped from doing so. Petitioners were thus entitled to the option of proceeding with the instant lawsuit on the merits of their claims even though the judgment of the court of appeals affirming their right to arbitration was correct.**

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*Hearst's argument below that it could not repudiate the arbitration provision herein because of the existence in such provision of *ex parte* procedures for the appointment of an arbitrator is fallacious, since Hearst, in repudiating the entire agreement, including the arbitral provisions thereof, obviously repudiated the *ex parte* procedures contained therein. Moreover, the mere fact that a party may have remedies with respect to a repudiation does not make it any the less a repudiation.

**The Guild's attempted pursuit of arbitration through the AAA which resulted in the purported award on timeliness in no way affects the rights of petitioners herein to pursue their judicial remedy. Since Hearst's repudiation gave petitioners alternative remedies, *i.e.*, arbitration or a lawsuit, petitioners could not be deprived of the latter remedy by their attempt to pursue arbitration in these circumstances where, *inter alia*, there was no consideration or determination on the merits.

2. The Decision of the Court of Appeals Conflicts in Principle With U.S. Bulk Carriers, Inc. v. Arguelles, 400 U.S. 351 (1971) Which Holds That Arbitration Is Not the Exclusive Remedy With Respect to Wage Claims of Seamen Asserting Their Statutory Remedies.

In *U.S. Bulk Carriers, Inc. v. Arguelles,* 400 U.S. 351 (1971), this Court held that arbitration was not the exclusive remedy available to a seaman seeking to enforce a claim for wages under 46 U.S.C. Section 496, which afforded him a statutory remedy for such claims.

The Supreme Court of Iowa, in *Thompson v. Iowa Beef Packers, Inc.,* 185 N.W.2d 738 (1971) applied the principle of *Arguelles* to claims for overtime compensation under the Fair Labor Standards Act which could also have been processed as grievances under a collective bargaining agreement. This Court granted certiorari (404 U.S. 820 (1971)), but later dismissed it as improvidently granted (405 U.S. 228 (1972)-),

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It is well settled that there is no binding election of remedies unless the two remedies are inconsistent. If, as here, the remedies are consistent or concurrent, a party may first pursue one remedy and then another until he obtains satisfaction of his claim. *Fredericksen v. Renard,* 247 U.S. 207 (1918); *Bierce v. Hutchins,* 205 U.S. 340 (1907); *Henderson Tire & Rubber Co. v. Gregory,* 16 F.2d 589 (8th Cir., 1926).

Furthermore, a party who at first unsuccessfully pursues a remedy which he believes is available but which in fact is not, may thereafter pursue another remedy and obtain the appropriate relief. *Bierce v. Hutchins,* 205 U.S. 340 (1907); *Southern Pacific Co. v. Bogart,* 250 U.S. 483 (1919); *Sears, Roebuck & Co. v. Blake,* 123 F.Supp. 131, aff'd *sub nom. Sears, Roebuck & Co. v. Metro Engravers,* 245 F.2d 67 (9th Cir. 1956); *Agar v. Winslow,* 123 Cal. 589 (1899). In the instant case, even if Hearst's position were sustained with respect to Roberts' purported arbitration award, such a decision would mean only that the arbitral remedy was not available. The unavailability of that remedy would not preclude petitioners from exercising the alternative judicial remedy.

on the basis that the employee claim was based upon an alleged violation of the statute but the arbitration provision of the collective bargaining agreement encompassed only alleged violations of the agreement.

The instant case raises the issue of arbitration *vis-a-vis* a wage earner's statutory remedy in another context.

The State of California, like many states, has adopted a comprehensive labor code which provides for prompt and full payment of all wages due to employees, penalty wages in the event of failure to make timely payment of wages, and criminal sanctions in the event of willful violations. [Labor Code of the State of California, Section 200, *et seq.*] The California law recognizes the wage earner's right to sue in a court of law to enforce his statutory rights. [*Id.*, Section 218.]

The benefits involved in the instant case, being in the nature of deferred compensation for services and in the nature of pensions, retirement benefits or severance pay are clearly "wages" within the meaning of the California State Labor Code. See *Estate of Hollingsworth*, 37 Cal.App.2d 432, 436 (1940); *Division of Labor Law Enforcement v. Ryan Aeronautical Co.*, 106 Cal.App.2d 833 (1951); *Kern v. City of Long Beach*, 29 Cal.2d 848 (1947); *Terry v. City of Berkeley*, 41 Cal.2d 698 (1953). *Cf. McCloskey v. Division of Labor Law Enforcement*, 200 F.2d 402 (9th Cir., 1952); *In re Public Ledger*, 161 F.2d 762 (3rd Cir., 1947); *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir., 1948).

The decision of the court of appeals herein thus deprives petitioners of their right to enforce through the courts statutory wage claims against their employer under a California state statute which has been in ef-

fect since 1937. This decision conflicts in principle with *Arguelles, supra.* Moreover, since the California statute is typical of statutes in most states, the decision raises an important issue under the federal labor laws —whether the existence of arbitration as a remedy supersedes and bars employees from utilizing statutory remedies for the recovery of wages.

3. If Hearst's Petition for Writ of Certiorari With Respect to the Decision Below Ordering Arbitration (Sup.Ct. No. 74-982) Is Granted, the Instant Petition Should Also Be Granted.

As noted above, respondent herein has filed a Petition for Writ of Certiorari with respect to the decision of the court below ordering arbitration (Sup. Ct. No. 74-982). It is petitioners' position that respondent Hearst's petition is without merit and should be denied. Although petitioners believe, as argued above, that there are valid reasons for granting the petition herein even if Hearst's petition were denied, petitioners' main concern in the instant litigation has been and continues to be to obtain a hearing on the merits of their claims in one forum or the other. At issue here are retirement benefits for former employees of Hearst, many of whom are well in excess of 65 years of age. Petitioners agree with the court of appeals that "it is time to get on with it." Thus, petitioners would be satisfied if Hearst's petition were denied and they could be assured of a hearing on the merits in the arbitral forum. If Hearst's petition in No. 74-982 is denied, petitioners have no desire to further prolong this litigation in this Court. Accordingly, if Hearst's petition in No. 74-982 were denied, petitioners would no longer urge the granting of certiorari herein.

In the event, however, that Hearst's petition in No. 74-982 were to be granted, there would be additional compelling reason for also granting certiorari herein.

The two appeals were considered jointly by the court below. It is clear from the court's opinion that its decision to affirm the dismissal of petitioners' action herein was based upon its decision in the companion case ordering arbitration. The court apparently concluded that it was unnecessary to decide the issues herein in view of its decision ordering arbitration or that because the court had ordered arbitration petitioners were not entitled to proceed in court.

The court of appeals clearly intended to afford petitioners a hearing on the merits of their claims. Its affirmance of the dismissal herein was based upon its decision in the companion case ordering arbitration. Had arbitration not been ordered, the court might well have reached a contrary result in the instant case. Thus, if Hearst's petition in No. 74-982 is granted and the petition herein denied, petitioners might be deprived of the hearing on the merits which the court of appeals clearly intended them to have. Under such circumstances, denial of the petition herein might result in a final decision directly contrary to the result intended by the court of appeals.

Clearly, if the court's decision ordering arbitration is to be reviewed, its decision in the companion case refusing to permit a pursuit of judicial remedies because it had ordered arbitration should also be reviewed.

Additionally, if Hearst's petition in No. 74-982 were to be granted and the decision below reversed and if the petition herein were denied, petitioners would be

left with no remedy and with no hearing in any forum on the merits of their claims. Such a result would work a forfeiture of vested rights and, we respectfully submit, would be contrary to public policy.

We are dealing here not with an ordinary claim for breach of contract, but with a breach of contract arising out of an employer's willful refusal to pay its employees their retirement, death, disability and dismissal benefits. These are benefits accrued as a result of long years of service—in some cases even a lifetime —benefits for which the employees gave up wage and other increases in the reasonable expectation that when they retired, died, were disabled or dismissed, they or their families would have these savings at a time when they were most needed.

These benefits represent no small amount. The average retirement benefit is approximately $8,000 per person and approximately $400,000 in the aggregate for the named plaintiffs alone. The aggregate amount involved with respect to the other employees covered by the class actions herein is well in excess of that figure. To these working men and their families these benefits may represent their total savings. The retirement benefits involved herein, according to every authority found, are vested and are provided special protection by the law; perhaps most importantly, they are benefits to which, petitioners are clearly entitled. See *Owens v. Press Publishing Co.*, 20 N.J. 537, 120 A.2d 442 (1956); *Hercules Powder Co. v. Brookfield*, 189 Cal. 531, 53 S.E.2d 804 (1949); *Brooklin Eagle, Inc.*, 49 L.A. 147 (Arb. Willard Wirtz, 1959); *H. K. Porter Co.*, 49 L.A. 147 (Arb. Sidney L. Cahn, 1967); *c.f. Skaggs v. City of Los Angeles*, 43 Cal.2d 497 (1954); *Terry v. City of Berkeley*, 41 Cal.2d 698 (1953);

Kern v. City of Long Beach, 29 Cal.2d 848 (1947); *Hunter v. Sparling*, 87 Cal.App.2d 771 (1948).

The long-standing public policy of protecting employees from the loss of such benefits which they have earned by years of service is manifest.

Federal concern with protecting the rights of wage earners is clear from the provisions of the Labor Management Relations Act, 29 U.S.C. Section 151, *et. seq.*, which guarantee to employees the right to be represented for the purpose of collective bargaining, and the provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201, *et seq.*, which guarantee the payment of minimum wages and overtime rates to employees. State statutes, such as the California Labor Code, similarly demonstrate the public concern that working men and women receive the wages which they have worked to earn.

Moreover, the wages involved herein are not ordinary wages; they have been earned and accrued over many years of labor and are retirement benefits in the nature of pensions. The rights to such benefits are particularly protected by law. *Gibson v. City of San Diego*, 25 Cal.2d 930 (1945).

Congressional concern regarding these types of benefits is obvious. Employee welfare and pension benefit plans have been subject to federal regulation for some time under the provisions of Section 302(c)(5) and (6) of the Labor Management Relations Act, 29 U.S.C. §302(c)(5) and (6) and under the provisions of 29 U.S.C. Section 301, *et seq.*

Federal concern over the administration of such benefit programs and over the losses suffered by employees who had worked for many years to accrue

retirement benefits with the expectation of being able to live with some dignity in their later years culminated last year in the adoption by Congress of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829.

This recently-adopted Act is designed to prevent the very type of forfeiture which Hearst attempts to perpetrate herein. Section 2 of the Act, setting forth the Congressional findings and declaration of policy leave no doubt that a forfeiture of the benefits involved herein without even a hearing on the merits would be contrary to public policy.

Indeed, under the Employee Retirement Income Security Act of 1974, the type of benefits involved herein undoubtedly would have to be maintained in trust with a written trust instrument and named trustees. In this respect, it should be noted that one of petitioners' causes of action herein is for declaration of a constructive trust.

Throughout this litigation, petitioners' principal objective has been to have their "day in court" on the merits of these claims, in either a judicial or arbitral forum. Clearly, there is a strong public policy against a forfeiture of these vested rights. At the very least, petitioners are entitled to a hearing on the merits of their claims.

If Hearst's petition in No. 74-982 is denied, petitioners will be able to proceed to an arbitral hearing of their claims in accordance with the order of the court of appeal. However, if Hearst's petition in No. 74-982 were to be granted and the decision of the court of appeals ordering arbitration reversed, we respectfully submit that the public policy considera-

tions outlined above would require that petitioners be permitted to pursue their judicial remedies herein.

Nor are there any reasons why petitioners should be prevented from having a judicial hearing on the merits of their claims should they be deprived of such a hearing in the arbitral forum. Hearst might suggest that arbitration is what it bargained for and that arbitration therefore should be the exclusive remedy, but closer analysis of this contractual assertion shows its transparency. While it is possible that at the time the agreement was entered into, Hearst bargained for arbitration, it is clear that at the time this dispute arose, arbitration no longer had any value for Hearst; in fact, Hearst consistently refused to arbitrate and denied that the dispute was arbitrable.

Nor are the policy considerations which usually favor arbitration in labor relations applicable here. Arbitration is normally favored, by the parties and the courts, because it is a quick, inexpensive remedy which promotes industrial stability and labor peace and, by speedy resolution of disputes, avoids labor unrest and strikes. In the instant case, of course, the dispute arose at a time when a strike was already in active progress over the terms of a new labor agreement and at a time when arbitration could not possibly have prevented labor unrest. Obviously, under the circumstances of Hearst's repudiation herein, arbitration also could not and has not provided the quick, inexpensive consensual remedy favored by the courts.

Equity and public policy thus require that petitioners not forfeit these vested retirement benefits without even having had the merits of their case heard; if the claims cannot be raised in arbitration, petitioners respectfully

submit that they must be permitted to proceed with their court action herein.

Accordingly, if the petition in No. 74-982 is granted, certiorari should also be granted herein. If Hearst's petition in No. 74-982 is denied, petitioners herein do not urge the granting of the petition herein.

CONCLUSION.

For all of the foregoing reasons, it is respectfully urged that the petition herein be granted if the petition for writ of certiorari in No. 74-982 is granted.

Respectfully submitted,

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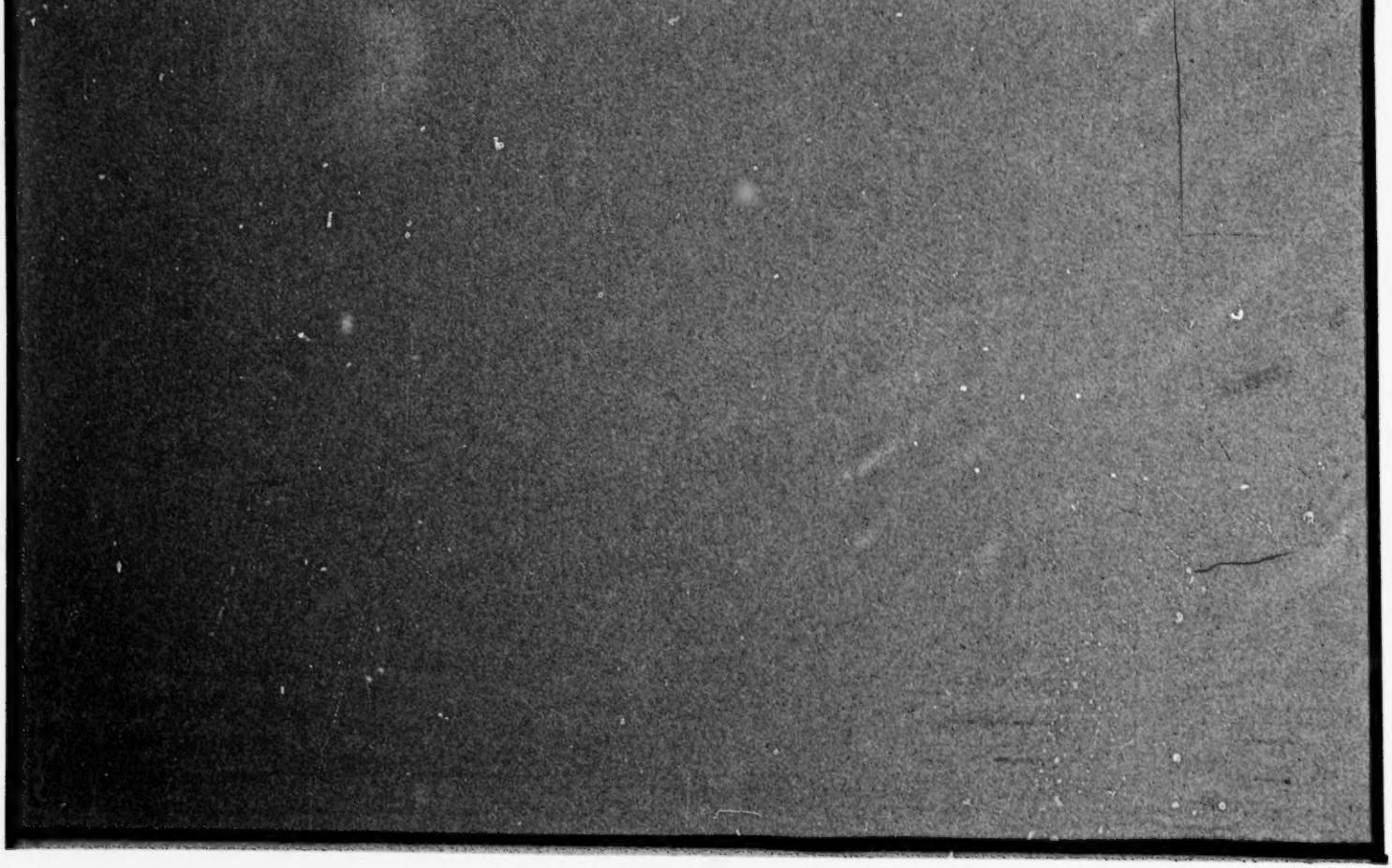
February 28, 1975.



APPENDIX A.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN THE MATTER OF ARBITRATION BETWEEN LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, *Petitioner-Appellee,* *vs.* THE HEARST CORPORATION, a corporation, Los Angeles Herald-Examiner, a Division of The Hearst Corporation, and Hillbro Newspaper Printing Company, a Division of The Hearst Corporation, *Respondents-Appellants.*	)	No. 73-1742
		OPINION
LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, et al., *Plaintiffs-Appellants,* *vs.* THE HEARST CORPORATION, a corporation, *Defendant-Appellee.*	)	No. 73-1838

[October 4, 1974]

Appeal from the United States District Court for the Central District of California

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Before: MOORE,* WRIGHT and GOODWIN, Circuit Judges.

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*The Honorable Leonard P. Moore, Senior United States Circuit Judge, United States Court of Appeals for the Second District, sitting by designation.

MOORE, Circuit Judge:

Two appeals are presently before us. They involve the same subject matter, they arise out of the same facts and the opinions were written and judgments were directed to be entered by the same district judge (Hon. Robert J. Kelleher). The appeals will be considered and decided together.

The parties in "IN THE MATTER OF ARBITRATION BETWEEN LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, Petitioner-Appellee v. THE HEARST CORPORATION, a corporation, Los Angeles Herald-Examiner, a Division of The Hearst Corporation, and Hillbro Newspaper Printing Company, a Division of The Hearst Corporation, Respondents-Appellants" (No. 73-1742) are a group of employees of The Hearst Corporation or their beneficiaries represented collectively by Petitioner-Appellee, which will hereinafter be referred to as the "Guild." The Hearst Corporation, Respondents-Appellants, and its Divisions, publish, print and circulate a daily and Sunday newspaper, THE HERALD-EXAMINER, and will be referred to hereinafter as "Hearst."

The parties in "LOS ANGELES NEWSPAPER GUILD, LOCAL 69, AMERICAN NEWSPAPER GUILD, AFL-CIO, CLC, et al., Plaintiffs-Appellants v. THE HEARST CORPORATION, a corporation, Defendant-Appellee" (No. 73-1838) are likewise the Guild and Hearst.

The controversies stem from the rights, if any, of Hearst and the Hearst employees under two collective bargaining agreements, which had been entered into on or about January 28, 1966, by the Guild on behalf of

the Hearst employees and Hearst. The agreements provided for wages, hours, working conditions, etc., covering the employees' employment. These agreements were but a continuation of similar employment agreements, containing comparable benefits, under which many of the employees had worked for a substantial number of years.

Two provisions of the agreement relating to compensation are critical to any decision adjudicating the employees' rights thereunder. Article XI, entitled "Alternate Benefits" declared that an employee, upon reaching the age of sixty-five (65), or upon the completion of twenty-five (25) years of service, would become entitled to receive from Hearst a cash lump sum payment based upon the number of years of his service to Hearst in accordance with a certain schedule set forth therein. To receive these payments, the employees, so desiring them, had to tender their resignations and request payment. Article IV, entitled "Dismissal Pay" (somewhat of a misnomer) provided for a cash lump sum payment to the beneficiary of any employee who died after more than six (6) months of service, the amount to be dependent on the period of service as set forth in a schedule in said Article.

No ambiguity is to be found in the terms of these Articles or in the prerequisites necessary to obtain the agreed-upon payments. To Hearst and the employees they were as much a part of wages as the weekly or monthly stipend. The following facts had to be shown for entitlement under Article XI, (1) age sixty-five years (65) or over or twenty-five years (25) years or more of service, (2) resignation tender, and (3) request for payment: under Article IV, two facts (1) death and (2) six (6) months or more of service. Just

as there is no ambiguity in terms, there should be no ambiguity as to performance. However, commencing in the Fall of 1967, a series of events caused this otherwise stable situation to suddenly be turned into a controversy which in bitterness and duration bids fair to rivalling the War of the Roses. For some seven years the war has raged but thus far only in a series of legal skirmishes, none of which has attacked the main issue, i.e., the rights, if any, of the employees and Hearst under the agreements. It may seem quite incongruous after seven years for the courts now to say that it is high time to resolve this issue expeditiously and with finality but since courts have been created for this purpose they should so act when the issue is presented in proper form.

A few background facts will suffice. In September 1967 the Guild notified Hearst and state and federal mediation services that it intended to terminate or modify the existing agreements which expired on December 15, 1967. In October 1967 negotiations for a new agreement[1] commenced. As of yet, however, no settlement has been reached. No agreement having been reached by December 15, 1967, the Guild called a strike against Hearst, which has continued to date. However, the last seven years have not been uneventful for Hearst and the Guild.

Subsequent to December 15, 1967, employees who had reached the age of sixty-five (65) or had completed twenty-five (25) years of service, tendered their

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[1]Reference is occasionally made to "agreement" and to "agreements." Those words apply to the agreement which existed between Hearst, its employees and the Guild, covering the employees' employment and Hearst's obligations to them, and which defines the rights of the parties now before this Court.

resignations and requested the payments specified in the agreements, the beneficiaries of deceased employees also requested the provided-for payments. To these requests Hearst replied that the agreements were no longer in effect and accordingly rejected them, and refused to make the specified payments. Then followed a protracted series of meetings between Hearst and the Guild to discuss the matter with Hearst remaining adamant in its position that the agreements no longer applied.

At this stage must be discussed Article VII of the agreements which provides for amicable settlement (a hoped-for desideratum) of "all grievances arising under this Agreement" (Article VII, SECTION 1). For this purpose, Grievance Committees were to be established by both the Guild and Hearst, certain formalities for the submission of grievances were set forth and in the event that arbitration was requested "the parties shall meet to select an arbitrator to whom the grievance of the complaining party shall be submitted for final decision." (Article VII, Section 3A).

Of particular significance to the litigations before us is the following paragraph:

> B. If such an arbitrator is not selected, or the party adverse to the complaining party refuses for any reason to proceed to the selection of an arbitrator, or if for any other reason an arbitrator is not selected or secured within the aforesaid five (5) day period, then the complaining party has the right to request the American Arbitration Association to proceed to the appointment of an arbitrator pursuant to the present rules of the voluntary labor arbitration tribunal of the Ameri-

> can Arbitration Association, and the grievance shall be submitted to such arbitrator for final decision.

Although meetings between the Guild and Hearst were held during the Spring of 1968, Hearst did not alter its position that the agreements were not in effect. Finally, on June 19, 1968, the Guild by letter demanded arbitration "of the grievances raised by its letter of March 27, 1968, relating to Hearst's refusal to pay alternate benefits" and requested by letter a meeting to select an arbitrator. This demand for arbitration was rejected by Hearst on the specific ground "that it arises out of events subsequent to the expiration of the Guild's collective bargaining agreement . . ." Thereafter, the Guild continued to submit grievances because of Hearst's refusal to pay and continued to demand arbitration. Hearst's rejection of both demands was based upon the same grounds above specified.

At this point must be mentioned a diversionary maneuver in which the employees and the Guild engaged. Apparently feeling thwarted in their efforts to obtain payments from Hearst, they turned to the State Labor Commissioner, Division of Labor Law Enforcement of the State of California, by assigning to the State for collection their claims against Hearst. Hearings on the claims were held in the Fall and Winter of 1968 at which Hearst maintained its position that the agreements were no longer in effect.

The Commissioner found that Hearst owed the sums claimed and demanded payment of Hearst. Unable to collect from Hearst, the Commissioner attempted to file a criminal complaint against Hearst through the City Attorney of Los Angeles. The City Attorney refused

to issue a criminal complaint because a contract issue was involved, and the Labor Commissioner, asserting that the claimants had a contract remedy through arbitration, refused to pursue a civil action. Thus, more than six months of time were wasted, and the claimants were still without their benefits.

All during this period (1968-1969) negotiations (so-called) were taking place between Hearst and the Guild, at which the Guild demanded payment and arbitration and Hearst rejected both.

Suspicious that the Guild might request *ex parte* arbitration, Hearst in writing warned the American Arbitration Association (AAA) that there was no agreement in effect and that any request to appoint an arbitrator would be invalid.

Meetings, however, continued to the end of August 1969 without tangible results. Finally, on October 3, 1969, the Guild by letter requested the appointment of an arbitrator pursuant to AAA rules. In disregard of, and in non-compliance with, its own rules, the AAA on or about October 8, 1969, appointed Thomas T. Roberts as the Arbitrator. The Arbitrator advised the Guild and Hearst that on February 3, 1970, he would hold a hearing which would relate in particular "to the viability of the grievance, the propriety of arbitration, the procedure to be followed if there is to be an arbitration and, of course, my jurisdiction."

The Arbitrator so circumscribed his role as to make the proceeding before him a legal nullity. Thus, in his initial letter to the parties he wrote: "It should be clear that any appearance before me on February 3, 1970, will be in the nature of a 'special appearance.' More specifically, any appearance on that date will not con-

stitute a recognition of my jurisdiction nor will it be deemed a waiver of available defenses relating to a lack of arbitrability."

Hearst, to be doubly sure that its physical presence at any hearing would not be a waiver of its position that the matter was not arbitrable, specifically stated by letter that its participation "should not be considered as a general appearance, special appearance, nor a recognition of your jurisdiction; . . ." Furthermore, Hearst stated that its "involvement in this arbitration should not be construed as a relinquishment of its right and intention to proceed before any appropriate tribunal to vindicate its position that this matter is not arbitrable."

At the hearing itself on February 3, 1970, Hearst reiterated this position and added the ground that the matter was not arbitrable because the Guild had not made a timely request for the appointment of an arbitrator. To this statement the Arbitrator responded "that the Guild [should] understand that if we go forward this morning regarding anything that the company [Hearst] is not making a special appearance, a general appearance or a half-way between appearance." At this and the only hearing, the issue was restricted to the timeliness of the Guild's request for the appointment of an arbitrator. No testimony was presented as to the merits of the employees' claims.

On August 12, 1970, the Arbitrator rendered Findings and Award. He addressed himself to none of the claims or grievances filed by the employees except as he said that the grievances filed under the January 28, 1966 agreement were "not arbitrable because of the failure of the Guild to cause the appointment of an arbitrator in a timely manner as required by Article VII

of the said agreement." Thus, he challenged, *sua sponte*, his own appointment by the AAA and, by creating a quasi statute of limitations not in the agreement, decided that the grievances were not arbitrable—in other words, he rejected his jurisdiction to pass upon the asserted grievances.

Frustrated by the California Labor Commission to obtain such benefits to which they may be entitled under the agreement and by the holding of the Arbitrator that their claims were not arbitrable, the beneficiaries under the agreements turned to the courts for relief.

On November 18, 1970, the Guild filed a petition to vacate the so-called Arbitrator's award. The Guild also filed an action against Hearst in the district court for breach of contract, unpaid wages, work and labor performed, money had and received and for certain declaratory relief.

Both actions came on for trial and decision before the Honorable Robert J. Kelleher, *Judge*. Decisions in each action were rendered under date of January 10, 1973. From the decision (Appeal No. 73-1742) vacating the so-called arbitration award and directing that arbitration proceed on the merits, Hearst appeals. From the decision (Appeal No. 73-1838) dismissing the breach of contract, etc., action on the ground that arbitration is the exclusive remedy under the agreement, the Guild appeals. These appeals will be considered on a composite basis because it would seem that together they present all questions of law and fact pertinent to a resolution of the respective rights of the parties.

So many questions of law and fact have been raised that some sifting analysis may well be made at the out-

set. The primary and initial question to be solved is: is the agreement in effect so as to control the rights of the parties thereto and, if in effect, what are those rights? Hearst claims that it is not and that it ceased to be operative either after its expiry date or because of the Guild's strike on December 15, 1967. The Guild, in turn, claims that the agreement was a wage contract; that the rights of the employees to the payments therein provided for became vested; and that these were not destroyed by the failure to negotiate a new contract or by strike. Subsidiary to this question is whether there is a difference between employees whose rights ripened on or before December 15, 1967, and those whose rights ripened thereafter. But all important is *who* is to determine whether the agreement was in effect so as to create these rights because, if there be no enforceable agreement, no rights substantive or procedural flow therefrom. The choice would appear to be limited to the courts, an arbitrator or possibly both.

The issue is not without its complexities. As the District Court pointed out in its opinion (Arbitration vacatur case) "Hearst did '. . . not intend to relinquish its right to have this question of arbitrability resolved in any appropriate court tribunal.'" (Arbitration Proceedings' Transcript at 7.) The Court also referred to a pre-trial statement by Hearst's counsel that first, the Court had "to find that the basic underlying dispute is arbitrable. That is the duty of the Court." (Tr. Oct. 21, 1971, at 88). Although this comment may be somewhat ambiguous, i.e., is the agreement in effect and operative and is the dispute arbitrable thereunder, it is clarified by the Court's making a "judicial determination" and adjudging that "The contract between the parties, so far as it provides for amicable settlement

or arbitration of disputes, is in full force and effect." and that "the grievances initiated by the Guild, based on Articles IV and XI of the collective bargaining agreements are properly arbitrable under those agreements;." The Court kept open the opportunity for amicable settlement by ordering that the Guild and Hearst "proceed to adjust their dispute as provided in Article VII of their agreements." However, if such a settlement were not reached as contemplated in sections 1 and 2 of said Article, "the parties shall have the right to proceed to have arbitrated the merits of the disputes as provided in section 3 of Article VII of their agreement."

The Conclusions of Law give direction to the judgment. The Court concluded that "the existence of an agreement to arbitrate a particular dispute is a matter for the Courts to decide"; that Hearst had not relinquished its right to have this issue judicially determined; that the issue of substantive arbitrability not having been determined, the Guild was precluded from unilateral initiation of arbitration; that the Arbitrator's award on procedural issues was of no effect and should be vacated. Of particular importance are the conclusions that the agreements are in full force and effect; that the grievance and arbitration provisions "cover the alternate benefits and dismissal pay disputes" and that Hearst is bound to resolve the grievances in the manner provided by the agreements; and that the parties must proceed to adjust their dispute as provided in Article VII. A judgment to this effect was ordered.

The Court, thus, clearly answered the question: was the agreement in effect. Obviously in its opinion neither expiry date nor strike had destroyed its contractual

obligations. All that remains is to determine the respective rights of the parties thereto.

On appeal (the award vacatur appeal) Hearst argues in substance that the Guild, by appearing before the Arbitrator on February 3, 1970, and litigating the procedural issue of timeliness in seeking arbitration, is bound by the award which is subject to only a limited judicial review which review does not include examining the Arbitrator's determination that the Guild delayed unreasonably in appealing to the AAA and that the Arbitrator could decide *sua sponte* whether he could limit himself solely to the issue of the propriety of his appointment.

Our function on appeal is to pass upon alleged errors in the District Court's opinions. Vacatur of the so-called award is the ultimate issue in No. 73-1742.

The award should be vacated. The parties made their agreement under which the Guild employees worked and Hearst received the benefits of their services. The employees' right under Articles XI and IV were an important part of their contract. For over two years Hearst rejected all demands for recognition of the employees' claims and for arbitration on the theory that no agreement was in effect. Nevertheless negotiations of sorts were continuing during that period. When finally on October 3, 1970, the Guild was driven to seek unilateral arbitration, the AAA in non-conformity with its own rules appointed Arbitrator Roberts. The record discloses no facts upon which a claim of lack of timeliness can be sustained even if this had been the grievance contemplated by the agreement. All during this period it was Hearst and not the Guild which refused to recognize any duty to arbitrate.

We turn now to the Guild's action for breach of contract, etc. (Appeal No. 73-1838). The District Court dismissed this action "[s]ince arbitration is the exclusive remedy, an action for damages in breach of contract will not lie." The Court relied on the so-called trilogy[2] as enunciating a national policy of settling labor disputes by arbitration. On this appeal Hearst, despite its repeated proclamations that no agreement was in effect, supports the District Court's position that the Guild's sole remedy through "the Arbitral Process Provided for by the Collective Bargaining Agreement." It claims that the Guild had the right to proceed *ex parte* to arbitration. But even in this endeavor the Guild was frustrated by Hearst's refusal to recognize the agreement and to appear, and by the Arbitrator's acceptance of that refusal. In view of our decision affirming the District Court's vacatur decision No. 73-1742, it is unnecessary to consider what the effect of a decision might have been against a "company [(Hearst) that] is not making a special appearance, a general appearance or a half-way between appearance."

While there is no doubt that arbitration is the favored path to the solution of labor disputes, there still remains to the courts the duty to oversee the arbitral process to ensure that the parties receive the arbitration that they bargained for. Thus, in this case the Court had jurisdiction to determine arbitrability and then to compel arbitration, *IUOE Local 150 v. Flair Builders, Inc.*, 405 U.S. 487 (1972). But this super-

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[2]*United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); and *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

visory function is a far cry from that of an arbitrator taking into his own hands the timeliness of his own appointment, a matter quite *dehors* the agreement and parenthetically quite unsupported by the facts.

It might well be that Hearst's repudiation of the agreement would have given the Guild the right to obtain a judicial determination of its rights on the theory of breach of contract. But after seven years, it is time that the merits of the controversy be decided. The question is should decision be by court or by arbitrator? Even if arbitration be not the exclusive remedy, it is the remedy for which the parties contracted and which the District Court has decreed to be the proper road to follow.

Both parties have cited hosts of cases dealing with the labor problems of other companies under other circumstances. Most of them stand for the proposition that arbitration is to be favored for a solution of labor disputes as indeed it should be if the subject matter of the disputes is put fairly before the arbitrator.

However, this court is not called upon to debate the wisdom of other decisions upon other facts. Our task is to decide the relief which should be granted upon the specific facts before us. Accordingly, we affirm the judgments of the District Court in both appeals except with one slight modification. The seven years have produced no signs of amicable settlement. No benefit will come to either party by continuing their deadlock. In colloquial terms, it is time to get on with it. Therefore, the judgment in No. 73-1742 is modified to the extent that the parties shall have the right to proceed to have the merits of their disputes arbitrated; that either party, or both, may forthwith request the American Arbitration Association to cause the appointment

of an arbitrator who shall be appointed in accordance with its rules; that the arbitrator shall hear and determine the rights of the parties under the agreement including the alternate and dismissal pay benefits and any other issues properly before him; and that such appointment, hearings and determination be made as expeditiously as possible.

No. 73-1838

In view of our decision with respect to No. 73-1742 holding that any and all grievances properly cognizable under the Hearst-Guild collective bargaining agreement be decided by an arbitrator, the judgment in No. 73-1838 is affirmed.

APPENDIX B.

Memorandum of Opinion and Order.

IN THE UNITED STATES DISTRICT COURT, FOR THE CENTRAL DISTRICT OF CALIFORNIA.

LOS ANGELES NEWSPAPER GUILD, et al., Plaintiffs v. THE HEARST CORPORATION, Defendant. Civil No. 71-21-1—RJK.

Filed: January 10, 1973.

By this action plaintiffs seek recovery of alleged dismissal pay and alternative pay benefits under two written collective bargaining agreements. Declaratory relief, a declaration of rights and other equitable relief are also sought, together with certain claims for money damages for failure to honor the collective bargaining agreements.

Jurisdiction of this Court is based upon Section 301 of the Labor-Management Relations Act of 1947, as amended, (29 U.S.C.A. § 185(a)).

The dispositive issue of law is whether arbitration as provided for in the collective bargaining agreements is the exclusive remedy available to the plaintiffs. The Court finds that it is.

Article VII of the collective bargaining agreements between the Los Angeles Herald-Examiner and the Los Angeles Newspaper Guild and the Hillbro Newspaper Printing Company and the Los Angeles Newspaper Guild provide for adjustment of disputes. Section 3 is as follows:

> "A grievance raised under Section 2 above, must be resolved, dismissed or submitted to arbitration within sixty (60) days following receipt of the written notice provided for in Section 2 above. . . ."

Clearly, this language demonstrates that the parties to these two agreements intended arbitration to be the exclusive remedy failing resolution of disputes by the grievance committees.

The trilogy, *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960), enunciated the settlement of labor disputes by arbitration as a national policy. If by contract disputes which cannot be resolved amicably are to be either dismissed or settled by arbitration, then "[a]rbitration is a stabilizing influence only as it serves as a vehicle for handling any and all disputes that arise under the agreement." *United Steelworkers of America v. American Mfg. Co., supra*, at 567.

Since arbitration is the exclusive remedy, an action for damages in breach of contract will not lie. Accordingly, this action is hereby dismissed and judgment rendered in favor of the defendants.

Disposition on the ground that arbitration is the exclusive remedy under the collective bargaining agreement precludes consideration of the other issues presented.

Counsel for defendants will prepare, serve and lodge an appropriate judgment pursuant to Local Rule 7.

Dated: January 10, 1973.

/s/ Robert J. Kelleher
Robert J. Kelleher
United States District Judge